

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 NEA-10 ISO-00 JUSE-00 L-03 COME-00
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DRAFTED BY EB/IFD/BP:TASCHLENKER:VJW
APPROVED BY EB/IFD/BP:APADAMS
JUSTICE - GSCHUELLER
EUR/WE - EBEIGEL
NEA/AFN - TWILKINSON
L/EB - SBENSON (INFO)

-----080469 131955Z /73

P 131904Z SEP 77
FM SECSTATE WASHDC
TO AMEMBASSY RABAT PRIORITY
AMEMBASSY PARIS PRIORITY

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USOECN ALSO FOR EMBASSY

E.O. 11652: GDS

TAGS: ETRD, EMIN, MO

SUBJECT: ANTITRUST: INVESTIGATION OF PHOSPHATE FERTILIZER
INDUSTRY

1. DEPARTMENT OF JUSTICE (DOJ) HAS INFORMED DEPARTMENT
THAT THEY BELIEVE TWO OFFICIALS OF OFFICE CHERIFIEN DE
PHOSPHATE (OCP), MESSRS. DANIEL COHAN AND JEAN ROUE, WILL
BE IN NEW YORK CITY FROM SEPTEMBER 18 THROUGH 21 ATTENDING
THE FERTILIZER INSTITUTE CONVENTION.

2. DOJ HAS SINCE 1975 BEEN CONDUCTING A FEDERAL GRAND
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JURY INVESTIGATION OF THE PHOSPHATE INDUSTRY. EVIDENCE
PRESENTED TO THAT GRAND JURY SHOWS THAT DURING THE 1973-74
PERIOD, THERE WERE NUMEROUS CONTACTS BETWEEN OCP AND
VARIOUS U.S. PHOSPHATE PRODUCERS, USUALLY SHORTLY BEFORE
EITHER OCP OR U.S. PRODUCERS ANNOUNCED PRICE INCREASES.
IN PARTICULAR, COHAN AND ROUE VISITED THE U.S. PERIODICALLY
FOR MEETINGS AND DISCUSSIONS WITH VARIOUS U.S. PHOSPHATE

PRODUCERS. JUSTICE WOULD SPECIFICALLY LIKE TO KNOW MORE ABOUT THE PURPOSE, NATURE, FREQUENCY AND SCOPE OF OCP CONTACTS OR UNDERSTANDINGS WITH U.S. PRODUCERS. SUCH CONTACTS OR UNDERSTANDINGS MAY HAVE RESULTED IN VIOLATION OF U.S. ANTITRUST LAWS.

3. IT WOULD BE DESIRABLE IF THE TWO OFFICIALS COULD EITHER MAKE SWORN STATEMENTS BEFORE THE GRAND JURY IN CHICAGO OR MAKE THEMSELVES AVAILABLE FOR LEGAL DEPOSITIONS BY DOJ ATTORNEYS IN NEW YORK. TIMING WOULD BE ARRANGED AT THE CONVENIENCE OF THE OCP OFFICIALS AND INTERPRETATION COULD BE ARRANGED. THEIR TESTIMONY COULD BE READ INTO THE GRAND JURY RECORD AND WOULD BE COVERED BY THE NORMAL PROVISIONS GOVERNING GRAND JURY SECRECY. EVEN IF THE INTERVIEW IS NOT MADE A PART OF THE GRAND JURY RECORD, IT WOULD NOT BECOME PUBLIC IN THE SENSE THAT PERSONS OUTSIDE THE GOVERNMENT WOULD HAVE ACCESS TO IT. IT IS ALSO IMPORTANT TO NOTE THAT, IN ANY EVENT, COHAN AND ROUE WOULD BE FREE TO HAVE COUNSEL PRESENT AND ABLE TO HAVE THEIR OBJECTIONS NOTED IN THE RECORD.

4. THERE IS LEGAL BASIS IN U.S. LAW FOR EXTENDING JURISDICTION OF THE U.S. TO FOREIGN COMPANIES WHICH ARE CARRYING ON SUBSTANTIAL BUSINESS IN THE U.S. IF FOREIGN COMPANIES, EITHER IN CONCERT WITH U.S. FIRMS OR ALONE, HAVE VIOLATED U.S. ANTITRUST LAWS THEIR OFFICIALS MAY BE LIMITED OFFICIAL USE

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SUBJECT TO CRIMINAL PENALTIES IN THE U.S. BECAUSE OF THIS, COHAN AND ROUE MAY BE CONCERNED ABOUT SELF-INCRIMINATION SHOULD THEY GIVE THE REQUESTED TESTIMONY. IN THIS EVENT, DOJ WOULD BE WILLING TO GIVE IMMUNITY FROM U.S. CRIMINAL PROSECUTION (I.E., DEPONENTS WOULD BE PROTECTED UNDER U.S. LAW FROM USE OF EVIDENCE SO GIVEN IN ANY SUBSEQUENT CRIMINAL PROSECUTION IN THE U.S.).

5. IT SHOULD BE UNDERSTOOD THAT DOJ IS PREPARED TO SERVE SUBPOENAS ON MESSRS. COHAN AND ROUE EVEN IF THEY DO NOT RPT NOT WISH TO COOPERATE VOLUNTARILY AND IF THEY ARE WITHIN U.S. JURISDICTION.

6. DOJ IS NOT SURE IF COHAN AND ROUE ARE IN MOROCCO OR PARIS. EMBASSIES ARE REQUESTED TO CONTACT OCP OFFICES IN BOTH LOCATIONS AND APPRISE COHAN AND ROUE OF THE ABOVE AND REPORT THEIR REACTIONS. VANCE

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Message Attributes

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Copy: SINGLE
Sent Date: 13-Sep-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition Date: 22 May 2009
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Disposition History: n/a
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